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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK HAVERLY, et al.,

Defendants and Appellants.

B270875

(Los Angeles County  
Super. Ct. No. NA097487)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark C. Kim, Judge. Affirmed.

Deborah L. Hawkins, under appointment by the Court of Appeal, for Defendant and Appellant Frank Haverly.

Charlotte E. Costan, under appointment by the Court of Appeal, for Defendant and Appellant Holly Ramos.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant Keith Phillips.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Marc A. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

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Spouses Frank Haverly and Holly Ramos enlisted Keith Phillips to kill Ramos's mother, Elizabeth Wells, after she withdrew her financial support and sought custody of the couple's children in juvenile dependency proceedings. Masquerading as a social worker, Phillips gained entrance to Wells's home, severely beat her, and took her purse. Haverly and Ramos were convicted of conspiracy to commit murder and other crimes; Phillips, whose defense was that he acted under duress, was convicted of robbery. All three defendants appeal. We affirm the judgments.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Procedural History**

In the third amended information, Haverly, Ramos, and Phillips were charged with conspiracy to commit murder (Pen. Code,<sup>1</sup> § 182, subd. (a)(1)) (count 1); attempted murder (§ 664/187, subd. (a)) (count 2); and first degree robbery (§§ 211, 213, subd. (a)(1)(A)) (count 3).

With respect to counts 1 through 3, Phillips was alleged to have personally used a deadly or dangerous weapon within the meaning of section 12022, subdivision (b)(1), and to have personally inflicted great bodily injury within the meaning of section 12022.7, subdivision (a). In count 4, he was charged with first degree burglary with a person present (§§ 459, 667.5, subd. (c)).

Ramos was charged in counts 5 and 6 with forgery (§§ 475, subd. (c), 476), in count 8 with second degree commercial

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.



burglary (§ 459), and in count 9 with grand theft (§ 487, subd. (a)).<sup>2</sup>

The defendants were tried together with separate juries. Haverly was convicted as charged and sentenced to 31 years to life in prison. Haverly did not object to the admission of a certification of records from the California Victim Compensation and Government Claims Board, and he declined to dispute any portion of the attached itemized bills totaling \$14,207.84. The court ordered him to pay \$14,207.84 in direct victim restitution.

Ramos was convicted as charged and was also sentenced to 31 years to life in prison. Ramos stipulated that she was liable for direct victim restitution in the amount of \$14,207.84.

The jury found Phillips not guilty of conspiracy, attempted murder, and burglary, but convicted him of first degree robbery. The jury found true the special allegations that Phillips used a deadly or dangerous weapon and personally inflicted great bodily injury on Wells. The trial court sentenced Phillips to the upper term of six years for the robbery, plus three years pursuant to section 12022.7, subdivision (a) and one year pursuant to section 12022, subdivision (b)(1), for a total prison term of 10 years. Phillips stipulated to a direct victim restitution award in the amount of \$14,207.84.

## B. Evidence Presented by the Prosecution

### 1. End of Wells's Financial Support

Ramos was Wells's only child and her sole heir. Wells had supported Ramos for many years. At one point prior to her marriage, Ramos stole approximately \$30,000 from Wells by

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<sup>2</sup> The third amended information did not contain a count 7.



writing checks on Wells's account. Wells forgave Ramos and did not report the theft to the police. Wells increased her financial support when Ramos's children were born. As of 2011, Wells paid the rent for Ramos and Haverly's apartment in Northern California and sent them approximately \$400 per week for utilities and food.

In 2012 Haverly threatened Wells and was arrested on a drug charge. Wells stopped sending financial support to the family, instead renting an apartment in Long Beach for Ramos and the children. Wells paid Ramos's moving expenses and purchased a 2008 Honda Odyssey van to transport the family. In April 2013 Haverly reunited with Ramos in Long Beach. Wells stopped giving Ramos money, and Ramos and Haverly were evicted in May.

## 2. Thefts from Wells, May 2013-September 2013

In May 2013, Ramos borrowed Wells's van and never returned it. Instead, Ramos and Haverly forged Wells's signature on documents transferring ownership of the van to Haverly. The following month, Haverly and Ramos sold Wells's 2008 van for \$17,100 and bought a similar 2003 van for \$9,400.

Ramos stole Wells's checkbook. Between July and September 2013, Ramos and Haverly forged Wells's name on checks and transferred \$55,300 into their account. (RT 2723-2734, 3678-3695, 3699.) Wells discovered the transactions on August 29, at which time she realized that her checkbook was missing. Ramos obtained a cashier's check in the amount of \$10,000 on August 30 before the account was closed on September 3. Wells reported the check fraud to the police.



### 3. Haverly and Phillips in Jail

Haverly was in jail in Monterey County from August 23 to September 22, 2013. He and Phillips were housed in a dormitory that allowed inmates to interact. Ramos placed \$95 in Phillips's inmate account in mid-September.

### 4. Evidence Introduced as to Haverly and Ramos Only: September Phone Calls Between Haverly and Ramos

The prosecutor presented excerpts from three telephone calls between Ramos and Haverly, recorded while Haverly was in jail, to the juries for Haverly and Ramos.

On September 2, 2013, Haverly told Ramos about his friend, Phillips, whom he had known since 2000. Haverly said that he had tried to put Ramos on the phone with Phillips earlier. Ramos said, "I—okay[,] if you keep telling me about the same—okay[,] yes[,] I get it. I'm not brain dead."

On September 9, Haverly and Ramos spoke again. During the call, Haverly said to Ramos, "You know what needs to, to happen[,] don't you?"

Ramos replied, "I know, I know, I know, I know, I know[,] and I was thinking about that just earlier. I thought[,] God[,] [be]cause remember[,] you told me. You said in a month or two or somewhere down the line you're going to regret that . . . ."

Haverly said, "[I]t's not too late."

"And I thought about that," Ramos responded.

Haverly repeated that it was not too late, and Ramos said, "No, I suppose it's not . . . ." She reported that Wells was making arrangements to take the boys: "Her[,] just her, not me, not you, just her."

Haverly said, "Yeah, well[,] you know you know what needs to be. I don't even need to say it."



“Yeah, I know,” Ramos said, and told Haverly that her uncle, Robert “Sheaff” Wells,<sup>3</sup> had “said she has some plan to take them by force.” Ramos said she did not know what it meant to take them “by force.” Ramos said, “[H]ow dare she wants [*sic*] to take them by force, Frank.”

“What needs to be done, it needs to be done right when I get out so that basically I have a clear level head,” said Haverly.

Ramos indicated that she had not heard Haverly, and Haverly responded, “What, what, what we have to do as a collective—me and you both. What we have to do—it should be done immediately upon me getting out of jail here because I will have a clear head.”

Ramos responded, “Well[,] I know. I’m so stressed out, Frank. I mean[,] she wants, she, she wants to, she wants to take them.” She said, “Her plans include my children, they don’t include me[,] and they don’t include you.” She continued, “I’ll be God damned if she’s ever going to [take the children]. She wants the kids!”

A moment later, Haverly asked Ramos, “Don’t you agree that right when I get out with my level, clear head—it needs to be done then?” Ramos said she could not hear properly, and Haverly repeated, “It needs to be done when, right when I get out and have a clear[,] level head.”

Ramos responded, “No[,] yeah, I mean something we[,] ah. We need to talk about this and decide . . . .”

In the same conversation, Ramos said, “[I]f I do get into a predicament where I need my mother’s help, guess what? She’s not going to help. She’s going to try to throw the key away[,] you

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<sup>3</sup> We refer to Robert Wells by his nickname to distinguish him from his sister Elizabeth Wells.



know.” Haverly agreed. Ramos expressed concern that “[n]obody can handle . . . the kids.”

Haverly said, “No, no[,] Holly. Holly[,] you know what needs to be done, why don’t you, why don’t you come up with something?”

“Well[,] I know, I’ve been thinking about it. I’ve been thinking about it and pondering it and I’ve been thinking about[,] um[,] you know,” said Ramos.

“What’s so hard, Holly? It’s not hard,” Haverly responded.

As the conversation ended, Haverly told Ramos, “You’ve got right now, you’ve got yourself eleven days to think of a way for us to all go down there south and for fucking me and you to do what we need to do. And then to get back here immediately.” Haverly assured Ramos that she was “totally smart enough to think of that,” and that he would think about it too. Ramos agreed they would figure it out.

Haverly and Ramos spoke again on September 14. Haverly asked Ramos whether she had put money in Phillips’s jail account, and Ramos said she would do it immediately.

Later in the conversation, Haverly said, “I’ve got a lot of stuff figured out, and there’s a lot of stuff that’s going to be going on.” He continued, “And basically, fucking, you are going to fucking shit in your pants when I tell you everything, like, you’re going to really, really be like blown away.” Ramos responded that she could not talk with him about anything over the phone but that she had much to discuss with him as well.

Haverly returned to the subject of payments to Phillips and asked her to deposit funds in Phillips’s account immediately. Ramos said she had already put \$50 in Phillips’s account and that she would put in \$50 more. Haverly replied, “And that’s it.



And that's it. And then boom, and then I'm good. You won't have to—[be]cause I've got a hundred and eighty on my books right now, and what I'll do is I'll spend a hundred on commissary. And then I'll walk out of here with eighty bucks. Eighty-eight bucks is what I'll have when I walk out. Which is perfect.”

The couple made arrangements to speak again as they concluded their call. Haverly said, “And—and when I tell you that I—that we've got big things going on—basically you're going to shit in your pants, but basically we do.”

“A[ll right,] good. I hope so. We need some miracles around here[,] babe,” said Ramos.

Haverly answered, “Oh, we've, we've got some. We've got some[,] don't worry. I hope that—I hope that you're prepared. I hope that you're prepared to mentally—start mentally preparing yourself to say goodbye to—to, uh, people that were once in our lives good from the past, you know what I mean?”

Ramos replied, “I do[,] babe.”

##### 5. Evidence Introduced as to Haverly Only: Phone Call Between Haverly and Ramos

Haverly spoke with Ramos by phone on September 10, 2013, and told her, “I can't wait, I can't wait to talk to you when we're not on these phones in a week and a half because our problem, our problem, our big problem, you know what that is[,] right? With the person.” “You know our big problem with a certain family member,” he added.

Ramos described how difficult the children were and said, “I swear I'm going to have a nervous breakdown. I can't take it anymore. I'm going nuts.”

Haverly said, “I've got a solution to our problem.”



Ramos answered, “Well[,] good[,] I’m glad you have a something to something because I got a nothing to nothing[,] how about that?”

Later in the conversation, Haverly said, “Babe, I’ve got a solution to our problem but I can’t talk about it. I’ve got a solution and it’s what, what a real one and it’s a good one[,] baby.”

“A[ll right],” said Ramos, and Haverly asked if she had placed \$50 in Phillips’s jail account. She responded that she thought he wanted her to put \$100 in the account. At first Haverly said no, then changed his mind and agreed that she should place \$100 in the account.

#### 6. Ramos’s Arrest

Ramos was arrested in September 2013. While in custody, on September 24, Ramos requested that Sheaff, who administered a trust account set aside for her, wire her quarterly payment and an advance. When Sheaff said he was not sure if he could do that, Ramos said Haverly would have to sell their motor home if Sheaff would not send the money.

Sheaff told Ramos that Wells was not interested in purchasing the motor home. “Well[,] good!” said Ramos. “I don’t want to sell her anything. I don’t want to give her anything. I don’t want anything to do with her.” Ramos continued, “I don’t care about my mother. I’m talking to you and I would like the money.” She added, “I’ve washed my hands of her, completely,” and said that “if it’s up to me, she’ll never see my children again.”

#### 7. Child Protective Services Involvement

Monterey County Family and Children Services took custody of the children when Ramos was arrested. When Wells



learned of Ramos's arrest she contacted the agency and sought placement of the children with her. Kathryn Richards, the social worker assigned to the case, advised Wells that her home in Long Beach would have to be assessed before the children could be placed with her.

Richards spoke with Ramos and Haverly on September 18, 2013, while both were in custody, and told them that Wells had applied for placement of the children with her. Both Ramos and Haverly were adamant that the children not be placed with Wells. Haverly described Wells as "crazy and a pill popper." Ramos wanted Haverly to take the children when he was released from jail. Richards told them that the children would remain in foster care until at least October 16, 2013, the date set for the jurisdictional hearing on the dependency petition.

#### 8. Release from Jail

Phillips was released from jail on September 20, 2013. Shortly after his release, on October 1, 2013, Phillips wrote a letter to his son in which he stated that he would receive \$10,000 by October 31.

Haverly was released from jail on September 22, 2013. That day, he rented a space for a motor home at a Monterey motel. Ramos was released on September 26 or 27, 2013.

#### 9. Visitation and Planning for the Children's Placement

Contrary to Richards's instructions, Ramos did not contact Richards immediately upon her release to arrange visits and services. When she did contact Richards, Ramos said she had been busy and had things to do. Ramos was angry when Richards could not set an immediate visit with the children.



Richards met with Ramos and Haverly on September 30, 2013. Ramos was erratic, irrational, and unable to focus; instead of answering Richards's questions about the children's development, Ramos demanded their return. Ramos was angry that Richards had shared information about the children with Wells. Upon learning that Wells would be considered for placement, Ramos was very upset, stating that she did not want the children moved, that Long Beach was too far away, and that she did not want the children placed with her mother. Haverly also opposed placement of the children with Wells. He criticized the condition of Wells's home and described Wells as crazy. Richards explained that placement of the children with Wells involved a long process, and that because Wells lived at a distance it would take some time for background checks, service planning, and home visits.

On October 3, 2013, Ramos and Haverly had their first monitored visit with their children. That same day, Richards learned from a social service provider that Ramos said she wanted the boys placed with Wells. This struck Richards as odd given her prior vehement opposition to placement with Wells. When Richards asked Ramos for clarification on October 4, Ramos was unable to explain why she stated her placement preference to the social service provider instead of Richards, but confirmed that she wanted the children placed with Wells. Richards explained the placement process again to Ramos, who sounded frantic. Ramos was "loud, sometimes illogical, sometimes not following the conversation, generally just out of control." When Richards referred Ramos to documentation about the child welfare system, Ramos screamed, "So I traded my kids for some booklets?"



Eventually Haverly got on the line. He was calmer than Ramos and listened to Richards's description of the placement process and home visit planning.

Around October 8, Richards began to arrange an assessment of Wells's home. Ramos and Haverly knew Richards was making these arrangements. On October 8, Richards and Wells exchanged voice mail messages about scheduling the assessment. Richards was considering the week of October 21 for a visit.

#### 10. Ramos's Inquiries Concerning Wells

In the weeks before Wells was attacked, Ramos telephoned Sheaff multiple times. In one call, Ramos sought and obtained the details of a trip that he and Wells were planning. In another call, Ramos asked whether Wells's caregiver worked full-time or part-time. Sheaff had the impression that Ramos was "fishing for information" when she inquired about the caregiver's schedule "out of the blue."

Between September 29 and October 11, 2013, Ramos spoke to Wells almost daily. Kim San Jose, Wells's caregiver, heard many of the telephone calls over Wells's speakerphone. San Jose reported that for a few weeks Ramos inquired "constantly" about her schedule: she wanted to know when San Jose arrived at Wells's house, how long she stayed, and whether she stayed overnight. San Jose recalled that Ramos was "trying to find out what we did, where we went, how long we would be gone." During the calls Ramos asked for money and rarely expressed interest in her mother's health.



11. Phillips Joins Haverly and Ramos

After his release from jail, Phillips entered a Department of Veterans Affairs ("VA") rehabilitation facility. Between October 4 and October 11, 2013, there were 13 calls between Haverly's telephone and the facility.

On October 10, Haverly visited Phillips at the VA facility. Phillips introduced Haverly as his brother and explained that he (Phillips) had to leave because his son had been badly injured in a car accident and might not survive. Phillips acted distraught, but Haverly did not appear very concerned.

12. Morning and Afternoon of October 11

Security camera footage showed that Haverly, Ramos, and Phillips arrived at the motel in the van at approximately 5:30 a.m. on October 11. At approximately 10:20 a.m., Ramos placed a white shirt in a plastic bag, similar to a dry cleaning bag, in the van. Later, Haverly could be seen swinging what was possibly a cylindrical item on a cord from his wrist.

Ramos telephoned Wells on October 11 seeking \$5,000 for her attorney fees; Wells agreed to pay \$2,500 and paid the attorney directly. Ramos's telephone service was terminated on October 11.

At 2:49 p.m. on October 11, emergency personnel were dispatched to treat Ramos on a bus in Monterey County. Ramos reported shortness of breath. Haverly was with Ramos.

13. Phillips Attacks Wells

San Jose left Wells's home for the day between 7:00 p.m. and 7:25 p.m. Just after 8:00 p.m., Phillips knocked on Wells's door and identified himself as Keith Phillips from Monterey Social Services. Phillips was dressed in a black jacket and pants,



white shirt, and black tie. He carried a briefcase. Wells told Phillips that she was not expecting a social services visit, that it was late, and that she could see him another time. She relented and let Phillips in after he said he was tired, mentioned a diagnosis of one of her grandchildren, and explained that he was making the visit because Richards was ill.

After Wells and Phillips sat in the living room and talked for half an hour, Wells gave him a tour of her house. She noticed Phillips putting on latex gloves. When Wells turned her back after showing Phillips the upstairs areas, he hit her over the head with a club-like bat. Wells attempted to fight back and to get away, but Phillips beat her severely and attempted to strangle her. Phillips stepped over Wells, walked into the living room, picked up Wells's purse, and walked out.

Neighbors heard Wells screaming for help and came to her aid. A neighbor saw Phillips run from Wells's home and drive away in a gray minivan. Wells had been "brutalized": she sustained multiple serious head wounds and was covered in blood; one of her fingers had nearly been detached. She remained conscious, however, and gave her neighbors and the police an account of the attack, including Phillips's name.

#### 14. Actions After the Attack

Phillips discarded his jacket, shirt, tie, and a dented bat-shaped aluminum tire pressure checker, all of which had Wells's blood on them, near Wells's house. Phillips's DNA was also found on the dress shirt. Later that evening, Phillips used Wells's credit card at a filling station.

Shortly before 9 a.m. on October 12, video surveillance at the motel showed Haverly and Phillips entering the van and driving away.



On October 12, Ramos telephoned Wells at the hospital. Wells told her about the attack.

On October 13, Phillips told his ex-wife that he had driven down to Los Angeles in a borrowed van to meet with a publisher who wanted to publish his book. He said he expected an advance of \$10,000 and that the book deal would be worth more than \$100,000. Phillips did not warn his ex-wife of any danger.

Phillips returned to the VA facility a few days after he had left. He had shaved and cut his hair. Phillips said his son had passed away.

#### 15. Disposal of the Van

The juvenile dependency jurisdictional hearing for the children was set for October 16, 2013. Although Richards had given Haverly and Ramos vouchers for gasoline so they could drive to court, Haverly and Ramos skipped the hearing and drove to Arizona in the van. There, they sold the van to a stranger on the street for \$500. The purchaser found Haverly's driver's license, clothing, food, and toys in the van.

On October 21, Ramos told Richards that she was unemployed, owned the van and a motor home, had no money, and was living at the motel. On October 28, Ramos learned that her children had been moved to a new foster home and that Wells was aware of this change. Ramos was very upset that Wells spoke with the children regularly and knew about their new placement.

The following day, Ramos told Richards that the van had been stolen on October 17. Richards noticed that Ramos avoided eye contact while discussing the van, and she also thought it odd that Ramos had not mentioned the theft the prior week when she



listed her assets. Ramos said Haverly was making an insurance claim.

On November 5, 2013, Ramos reported to the police that she and Haverly had discovered the van missing on October 17.

16. Phillips's Arrest and Statements in Jail

On November 14, Phillips was arrested at the VA facility. Officers did not find any evidence that Phillips had contact with or payment from a publisher, or that he was writing a book. They did not locate any documents or books about California missions.

At the jail, police placed Phillips in a cell with two undercover agents posing as inmates. Phillips made a variety of incriminating statements. He said that if Haverly “holds on to his mouth, we’ll all be okay”; that he hit Wells in the head and that he had thought she was dead when he left; that the attack had been “all planned out”; and that he had attacked Wells for Haverly because of their long friendship and because Wells was going to take Haverly’s kids. Phillips said that when “we did it” Ramos was not supposed to be “in there,” and that Ramos was “a weak lin[k].” The agents asked why Ramos would talk with the police since she was involved in the plot, and Phillips speculated, “She could say she wasn’t. She could say, you know, it was just me and Frank—[¶] . . . [¶]—and that she just went along with it or didn’t want to be assaulted. I gotta fucking figure this out.”

17. Evidence Presented Only to Ramos’s Jury:  
Ramos’s Statements to Police

Ramos was arrested on November 14 in Monterey County and told she was being arrested for attempted murder. As Ramos was transported to Southern California, she said, “How could you



come up there and arrest me when I wasn't even there? I was in court that day."

On November 17, 2013, Ramos spoke with Detective Donald Collier and another detective in a recorded interview. Ramos told Collier that Haverly and Phillips knew each other from jail and concocted a "harebrained" scheme while together in jail. She said that Haverly and Phillips were together at the motor home while she was in jail. By the time Haverly posted her bail, "the wheels were already in motion in their heads." Ramos first denied being aware of the plan, but then said that the plan did not make sense to her and that she said it was a stupid idea. According to Ramos, "[T]ime went by, and I thought everything was fine." Phillips seemed like a reasonable person, "and he wasn't gonna do anything that I, you know, said was not a good idea."

Ramos accompanied Haverly to the VA facility. She thought Phillips planned to attend his son's sporting event. She said, "I had no idea that that was what he was going to do, none, until I talked to my uncle the next day." Ramos stated that Phillips "took it on himself to do what he did." She denied paying him to attack Wells. "I don't know if he went to rob her," Ramos said. She claimed not have learned all that had occurred because she wanted nothing to do with Phillips after what he did. She said, "[T]his harebrained scheme that was concocted in—in jail was just that. I mean, it wasn't like anyone was on drugs or anything like that."

Ramos said that on the day of the attack she had a panic attack thinking about Wells. She admitted writing checks on Wells's account without her knowledge.



18. Evidence Presented Only to Phillips's Jury:  
Recorded Telephone Call

On December 1, 2013, in a recorded telephone call, Phillips said that the police could not have recovered his DNA because he wore gloves. Phillips's girlfriend suggested that perhaps "she" had pulled his hair, and Phillips responded, "She didn't pull my hair. It wasn't like that."

C. Evidence Presented by Haverly to All Three Juries

1. Haverly's Testimony

a. Events Prior to the Attack

Haverly testified that he had been addicted to drugs for 20 to 25 years. He had an "up and down" relationship with Wells, and he tried to avoid her so that she would not become aware of his drug use and withdraw her financial support. Haverly's arrest for drug possession was "the final straw" for Wells's opinion of him. While he was incarcerated Ramos and the children moved to an apartment near Wells in Long Beach.

Haverly joined Ramos in Long Beach when he was released. Ramos and the children were moving into Wells's house, and he helped to make the home safe for the children. Wells was willing for Ramos and the children to stay with her, but not Haverly. Ramos said she and the children would leave if Haverly did. Wells threw the van keys to Ramos and told her to get out of her sight. Ramos and Haverly took the van and left, but Ramos returned to Wells's home and emerged with an envelope containing \$4,000. The family returned to Monterey in Wells's van with the \$4,000. They had no other money.

The family stayed at a hotel for a period of time. They knew that Wells would eventually report the van stolen. They



decided to transfer the van's title to Haverly. Ramos forged Wells's signature on the documentation. When Wells later called the police about the van she learned that its title had been transferred. Haverly and Ramos sold Wells's 2008 van for \$17,100, and then bought the 2003 van.

Ramos had taken Wells's checkbook during a visit. Anticipating difficulty establishing a bank account themselves, they decided to write a check to Ramos on Wells's account, give it to Haverly's mother to deposit in her account, and then take the cash from Haverly's mother. Soon they opened a bank account into which they deposited forged checks for approximately one and one-half months. They used the money to purchase a motor home.

Haverly was then arrested on a probation violation, and he spent 45 days in jail. He was housed in the same facility as Phillips, whom he knew from a previous stint in jail. Haverly and Phillips were friends. Haverly told Phillips that he feared one of his children was developmentally delayed. Haverly also said that Wells did not like him and that she was trying to break up his relationship with Ramos.

Haverly used drugs in jail, paying for them with money Ramos placed in his account. Ramos also put money in Phillips's account at Haverly's direction to help Haverly pay his debts from prior time in jail.

Phillips was released before Haverly. Once Haverly was released, he and Phillips spent a few days in the motor home before Phillips went to the VA facility. Ramos was in jail when Haverly was released; she was released when Sheaff sent bail money.



Haverly realized it would take time and effort to get the children out of foster care. Ramos was “in disarray” at the children’s removal. She was drinking less than usual but she appeared at a visit smelling of alcohol.

Haverly testified that in the September 14 recorded phone call with Ramos he was referring to Wells when he said he hoped Ramos was prepared to say goodbye to people. He did not refer to Wells by name because her name “just comes with a great deal of pain.” When he spoke of saying goodbye, he meant that the family was going to move to Mexico in the motor home.

Haverly testified that Phillips telephoned him from the VA facility and asked Haverly to call the VA and say that Phillips’s son had been critically injured in a car accident so that he (Phillips) could get a pass to leave. Haverly complied. Haverly was high when he picked Phillips up from the facility.

Over the next day and a half, Ramos, Phillips, and Haverly were together in the motor home and used alcohol and methamphetamine. According to Haverly, while they were drunk and high he began to “glamoriz[e]” stealing from Wells. He told Phillips that she “was a nutcase that drove around Long Beach with upwards of \$10,000 on her at a time,” and that she would have “a boatload of money” in cash because she was planning to travel. He told Phillips that Wells typically kept her money in her purse and said that Ramos had taken money from the purse without Wells noticing.

Phillips said, “I have to go rob your mother-in-law.” Haverly agreed Phillips could use the van. He directed Phillips to rob Wells, and they agreed to split the proceeds. Haverly did not intend to harm Wells. He did not direct Phillips, nor did he have a tacit agreement with Phillips, to hurt her. He did not



agree to have Wells killed. He did not threaten Phillips or his family.

Haverly told Phillips that the social services agency was going to visit Wells's home. Haverly may have said it would solve his problems if there were a way to make Wells disappear. He told Phillips that Wells lived in Long Beach, but did not provide her address.; he suspected that Phillips could access her address from the global positioning system (GPS) unit in the van.

Ramos was present for the conversation about robbing Wells but said nothing.

Haverly acknowledged that the security camera footage showed him giving Phillips clothes on the day of the attack. He denied giving Phillips a jacket or a black pair of pants, but admitted he might have given Phillips a white shirt. He testified that the item he was seen swinging in the footage was a key chain.

Phillips dropped Ramos and Haverly off at her attorney's office and then left with the van.

#### b. Events After the Attack

Phillips returned the van the next morning and did not tell Haverly what had happened. Haverly did not believe Phillips had gone to Long Beach because he was not gone very long and because the van did not have enough gasoline for the trip. Shortly after Phillips left by bus, Sheaff called and told Ramos that someone from social services had beaten and robbed Wells. After receiving the news, Haverly consulted the van's GPS and saw the van had been driven to Long Beach. Haverly removed the GPS and destroyed it. He felt "responsible because he said he was going to go rob her. I didn't know he was going to beat her up or do anything."



Ramos telephoned her mother, whose account of the attack caused them to “realize[] that this was not going to be something that was just going to go away.” They sold the van in Arizona because it would link them to the attack. Haverly told his father he had lent the van to Phillips to rob Wells, but that Haverly had not believed he would follow through.

Haverly and Ramos returned to California by bus. He never sent the van’s purchaser the pink slip for the van because his mother had it. He told his mother the van had been stolen.

### c. Haverly’s Statements

In a recorded phone call on September 1, 2013, Ramos told Haverly that Wells wanted to take the children. He responded, “Would you let me do what I wanted to do in the first place?”

Ramos said, “Well, I think we should [have] in the first place.” She said, “I think we should [have], I mean, that’s what I was thinking just last night. Oh, God, I was thinking.”

“Let’s not talk about this anymore,” Haverly answered. Ramos repeated that her mother wanted to take the children.

On September 11, 2013, Haverly told Ramos to look for somewhere to live in King City, but she did not want to search or move without him. They discussed a few different locations, and Ramos asked if he had the children’s schools figured out. Haverly said he did, and assured Ramos, “I’ve got everything—babe, when I tell you I’ve got everything figured out. Holly, I’m not kidding or exaggerating at all, I’ve got everything figured out.”

Ramos said that was good because she did not have everything figured out, and Haverly responded, “Don’t worry about it, I do, and that’s what I’ve been totally working on in



here . . . .” He told her he was sober and that this was but “one-hundred percent, fucking, clarity talk.”

On September 23, 2013, Haverly told Ramos that Sheaff said Wells had hired “the best lawyers in the world” and would do anything she could to take the children.

“No, she cannot take our kids,” Ramos said.

Haverly described Wells on September 24, 2013, as “the most hateful woman I have ever met.”

After Haverly was arrested, he was placed in a cell with two undercover agents pretending to be inmates. Haverly said of Phillips, “I told him, fucking, if there was some way to fucking just have her, fucking you know, disappear. And, fucking, he took it upon himself to fucking make that happen. Well, he didn’t make that happen. He fucking went down there and tried to fucking hit her with a fucking bat and made—just beat her up and made it worse.”

One of the agents remarked that if only Phillips had killed Wells, there would be no witnesses. “Exactly,” said Haverly.

“How can you not kill an old lady with a bat?” asked one agent.

“That’s what I said,” Haverly responded.

Later in the conversation, Haverly said, “I didn’t set up anything, give him anything later. Nothing like that. I mean, of course, I knew what he was going to do. But basically, fucking, there was some part of me that didn’t even fucking believe when I was handing him the keys that he was gonna go do it.”

Also during this conversation, the agents offered to “take care” of Haverly’s problem with Phillips while he was in jail. According to Haverly, he did not agree with them to “take care of



the problem,” and he did not agree to sell drugs in Northern California in return.

Haverly testified that one of the undercover agents identified himself as “Green Eyes” from the Coyotes, and that he had assumed that the Coyotes were a gang based on the agent’s appearance and manner of speaking. The other agent called himself “Monster” and did not identify a gang to which he belonged. They indicated that they were connected to the drug trade. Haverly testified that at the time of the conversation he was “in shock” and intimidated by the agents. He was afraid that these “Southern Hispanic gangsters” would see the words “Nor Cal” tattooed on his chest.

At the time Haverly spoke with the agents he had not slept in four days, and he had been using methamphetamine and alcohol. Although he was still feeling the effect of the methamphetamine when he was placed in the cell, he was not feeling the drug as much as he was “feeling the shock of being taken into custody with the charges” against him.

In an interview on the day of his arrest, Haverly admitted that he knew Phillips was going to rob Wells but that Phillips was only supposed to rob her.

## 2. Haverly’s Additional Witnesses

Haverly’s mother testified that near the start of August 2013, she went to the bank with Ramos, who cashed a cashier’s check for \$10,000, gave her the money, and asked her to manage it because it was their only money. Haverly’s mother kept a ledger of expenditures as the money was spent in August and September 2013. Haverly’s mother provided funds and documented expenditures in excess of \$12,000.



Haverly's mother described an incident in which a check Ramos and Haverly gave her bounced when she tried to deposit it. Haverly's mother also testified that Haverly had told her that the van had been stolen.

Michael DiMatteo testified as an expert witness concerning the motel security footage. He opined that the item Haverly was swinging on October 11 was a soft, flexible item like a lanyard and not a club of some sort. Collier was re-called; he testified that he had believed it was a cylindrical object, but "[m]aybe it was that, maybe it wasn't."

The physician who treated Wells in the emergency room after the attack testified that Wells had lacerations on her forehead, scalp, and left index finger; and injuries to her left hand. She did not have a skull fracture or spinal fracture. The scalp wounds had been life-threatening because of the amount of blood Wells lost, but she was no longer bleeding profusely when she reached the hospital because she received proper first aid. Wells lost a significant amount of blood.

#### D. Evidence Presented by Ramos to All Three Juries

##### 1. Ramos's Testimony

Ramos testified that she was a longtime alcoholic who drank daily. Due to her drinking, she "got into some trouble," including driving under the influence and convictions for felony petty theft and false impersonation. She was in a rehabilitation program for a time. Wells supported Ramos during this time. She paid for Ramos's apartment, gave her a weekly allowance, and provided funds for groceries.

Wells continued to support Ramos after she met Haverly and began having children, and she helped them move into a



larger home. Wells continued to pay Ramos's rent and put a weekly allowance into Ramos's bank account. Between 2009 and 2012, Wells met all of Ramos's needs, and Ramos relied upon her completely.

Ramos's relationship with Haverly was abusive, violent, and "fueled by drugs and alcohol." Haverly had once threatened that if Ramos left, he would drive the wrong way on a street and kill Ramos, the children, and himself. Ramos had denied the abuse in the past because she thought Haverly would change, she wanted to be with him, and she did not want him arrested in front of the children.

In September 2012, Ramos told the police about the abuse. She and the children then moved to Long Beach and lived in an apartment Wells rented for them. Wells bought a van to transport them. She paid for Ramos's living expenses and gave her additional money. Ramos stole money from her.

Subsequently, Ramos and Haverly took Wells's van and drove to Monterey County. Wells wanted the van back, but they sold it to pay their living expenses. They gave the proceeds from the sale to Haverly's mother to manage for them. Ramos and Haverly spent \$16,000 in 33 days. They purchased a van that looked like the one they had sold in the hope that Wells would not notice it was a different vehicle.

During the summer of 2013 Ramos became concerned that Wells wanted custody of the children. Wells was worried about Haverly's drug use, Ramos's drinking, and the fact that they were staying in hotels. Ramos became convinced after speaking with Sheaff that Wells was trying to take the children from her.

Because they were out of money for food, lodging, and clothes, Ramos began writing checks on Wells's account using a



checkbook she had found in the van. Haverly's mother deposited the first check they wrote into her account, and doled the money out to them; they later opened their own bank account. They began taking and spending larger sums of money. They bought a motor home in August for \$9500. Ramos bought three televisions. She took the children to Target and bought them anything they wanted. She bought them bicycles, a tricycle, and a scooter. She purchased clothes, new cell phones, fast food, and groceries. Ramos was drinking at this time.

Haverly was also spending money over the summer. He was arrested on a probation violation. Haverly and Ramos paid \$3,500 for his attorney.

While Haverly was in jail, he wanted Ramos to find a place to live in the hope of an earlier release. Ramos began looking at properties and attempted to build up a large account balance so she would be able to rent a residence despite having no verifiable income.

In late August, however, the check that was deposited by Haverly's mother was returned, and Ramos's bank access card was frozen. Ramos went to the bank, obtained a \$10,000 cashier's check, and directed that the remaining balance in her account be mailed to her. Ramos obtained the cashier's check so that she would not lose access to that money. She found that she was unable to open other bank accounts, so she gave the cashier's check to Haverly's mother to manage the money for them.

When the check she gave to Haverly's mother was dishonored, Ramos feared the bank would press charges. Ramos was not worried about Wells pressing charges; Wells had just told her to stop writing checks on her account. Wells did not threaten Ramos in any way concerning the checks; "she still told [Ramos]



to load up the boys in the van and come home when she found out [Haverly] was in jail.”

Ramos was unable to visit Haverly in jail due to an outstanding warrant, so they spoke on the phone 96 times while he was in jail. They talked about moving to Mexico with the children, which would prevent Wells from taking them. Haverly was erratic, wanting her to do things for him but wavering about what he wanted her to do. He changed subjects in the middle of conversations. Sometimes he talked about one thing while she was talking about another. Ramos was also distracted by the children during the calls and “wasn’t paying attention to what [Haverly] was saying.”

During the recorded call in which Haverly asked if Ramos would let him do what he wanted to do before, and Ramos answered that “they should have,” Ramos meant that they should have moved away with the boys. Ramos had been dragging her feet about moving because she hoped that the relationship between Wells and Haverly would improve and they could move back to Long Beach. She did not want to live in a motor home with the boys and to start over somewhere else. Part of the plan to move was to steal more money from Wells.

Ramos was arrested on September 15, while Haverly was still in jail, and the children were taken away. Ramos identified her mother and Haverly’s mother as potential caregivers for the children. Ramos told Richards she had \$4,200 in the hope that she could demonstrate her financial ability to take care of the children. Ramos and Richards had a hard time communicating; both were defensive, and the relationship was adversarial. Ramos wanted the children to be with her or with Haverly, but



she could tell that Richards did not want to give the children back to her.

Haverly was released from jail before Ramos and was unable to gain custody of the children. From jail, Ramos pressured Haverly to post her bail and was angry at the delay. She was “consumed with grief about her children” and thought of them “[e]very waking moment.” In the call in which Ramos had said she did not care about her mother, Ramos was unhappy that Sheaff continued to discuss Wells when she wanted him to agree to send bail money. When she said she did not care about her mother she was “really frustrated” that Sheaff would not give her the money, she could not get out of jail, and she could not secure the return of her children.

Ultimately, Sheaff agreed to send the money and Ramos was released from jail on bail on September 26. She spent that day addressing bail issues, and she telephoned Richards the following day. Richards was angry Ramos had not called sooner.

Ramos met Richards in person on or about September 30, 2013. Ramos was erratic and irrational; she wanted her boys back, did not understand why she and Haverly could not resume custody, and she was “overwhelmed” by the number of steps required before the children would be returned. Ramos eventually understood that she would not be able to get the boys back quickly, and she decided that she wanted them placed with Wells rather than foster care. She expressed this preference to the social services provider she was consulting about treatment programs.

Around this time Ramos had her first visit with her children. The boys wanted to come home. Ramos was alarmed that the foster mother did not speak English and at the lack of



information she received about the children. Ramos was only permitted to see the children for an hour per week. Ramos wanted her children to stay with Wells, with whom they were very close. Wells was the only person trying to help get the children out of foster care, and Ramos was “so touched by that.” Ramos believed that if Wells had the children she would receive more information about them and would be able to speak with them regularly.

When Ramos and Richards next spoke, Richards was upset that Ramos had spoken with the social services provider. Ramos told her she wanted the children placed with Wells immediately.

Between October 4 and October 11, Ramos and Wells frequently conferred about how to get the boys out of foster care. Ramos sought information about the trip Sheaff and Wells were taking because she needed to know when Wells would be available for the children’s placement with her. Ramos inquired about Wells’s caregiver because she wanted to make sure the caregiver would be there to help Wells care for the children. Ramos was concerned about Wells’s health and thought Wells needed around-the-clock care.

Ramos was placed on a waiting list for an inpatient residential treatment center. She was not able to stop drinking, and she drank “a lot” once her children were removed from her care.

On October 10, Haverly told Ramos that his friend Phillips, a teacher, needed to get out of his rehabilitation program to check on his wife and to see his son’s football game. Ramos recognized Phillips’s name from conversations with Haverly while he was in jail. She had put money into Phillips’s jail account, and the account of another prisoner as well, so that Haverly could



purchase commissary items to pay his jail debts. Also, Haverly had suggested that Ramos look for a rental in the southern part of the county and said that he could tell whether a residence was in a good area because Phillips was familiar with the schools.

Ramos was angry with Haverly “for going along with some type of a weird scheme to get this guy out of this program.” She thought it was terrible for Phillips to lie that his son had died to get a pass to leave the facility. She went with Haverly anyway because she felt unsafe alone in the motor home. She drank through the entire trip. Ramos did not participate in the conversation Haverly and Phillips were having because it did not interest her. She was “kind of out of it.”

Once they reached the motor home, Haverly and Phillips left Ramos there and went out to buy drugs. Ramos fell asleep waiting for them. When there was some sunlight she left the motor home and saw the van up the street. The three returned to the motel.

After searching the van with Phillips and Haverly for some misplaced drugs, Ramos closed herself off in the bedroom of the motor home and looked for clothes to wear to her court hearing that day. Ramos was “overwhelmed” about getting to court and by Haverly’s irrational and bizarre behavior. She needed to see her attorney before court to pay him, and she called Wells to confirm that she would pay his fee.<sup>4</sup> She heard Haverly “ranting about money, envelopes of cash.” Phillips looked at Ramos and rolled his eyes. Ramos believed Haverly was talking about stealing money from Wells, and she did not want any part of it.

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<sup>4</sup> Ramos testified that Wells had not completely cut off financial support; she had just stopped paying for her housing and giving her a regular allowance.



Ramos returned to the other room and gathered items for a shower.

At some point Haverly came to the bedroom and told Ramos that they were going to take money from Wells. Ramos said that this was “a stupid idea. Mom is trying to get the kids. We are trying to get the kids out of foster care to my mother. She is helping me with my lawyer. What are you talking about? I mean, he was just bizarre.”

Later that morning Ramos went to the showers, which were in front of the van, and took a shower. The large white item she was holding in the surveillance video was a towel. Ramos could be seen on the video doing something in the front seat of the car; she said that she was searching for the key to the restroom. She was in the shower for a long time, and Haverly followed her, yelling at her, as she went back to the motor home.

Ramos stayed in the bedroom until they left for court. She did not pay attention to what Haverly and Phillips were doing, except that she saw Haverly come into the bedroom and take clothes.

Ramos, Haverly, and Phillips left in the van. Ramos understood that Phillips was going to take the van to go see his family. They stopped at a store on the way to court so that Ramos could sell her phone for gasoline money. They purchased gasoline, tried to pawn another item, and headed to Ramos’s attorney’s office.

Ramos had been drinking and was “overwhelmed” about her court hearing. She was upset to learn that in addition to the drug and child endangerment charges that she already knew about, she was also being charged with using Haverly’s mother’s credit card without permission; she had thought she was being



charged over the checks she wrote on Wells's account. She was also upset that she could not free her children from foster care. She continued to be "overwhelmed" after the court hearing because she did not know what to do about her new charge and because she might not be sentenced to an inpatient program where she could follow her dependency case plan.

Haverly and Ramos took a bus back to Monterey. Ramos was "overwhelmed" because she had never taken a bus before and did not know how to do it. They had to "walk up to a booth, get a ticket and stand in line to get the bus. It was overwhelming. It was hot outside. It was terrible." While on the bus, Ramos began to hyperventilate and became nauseated; her hands "were seized up." They went to a hospital but left because Ramos felt better in the waiting room.

Ramos and Haverly walked back to the motor home, stopping for "a little bit of alcohol" on the way. When they got home, Ramos drank and went to bed. She had not eaten that day. Ramos did not conspire to kill her mother. She did not know there was a plan to kill Wells. She did not know that Phillips was driving to Wells's house. She thought he was visiting his family.

The following morning, Ramos discovered a message from Sheaff. She called Sheaff, who told her that Wells had been attacked. Sheaff knew few details; Ramos spoke with him a few times that day, seeking information about Wells's location and condition, and how to reach her.

Eventually Ramos learned where her mother was and telephoned her. Wells told Ramos in detail what had happened. Wells was very loving during the conversation, but the next time



Ramos called, Wells was short with her and told her not to call again.

At some point in the morning after the attack, someone knocked on the door and Haverly left for an hour. Ramos had not yet spoken to Wells at this point. At mid-morning Haverly told Ramos that Phillips had taken the van and attacked Wells. Ramos described her reaction: "I couldn't believe it. I was shocked. I had no idea. I didn't know what to do. I was scared."

Haverly told Ramos that the authorities would come to them and that the van would link them to the attack. Ramos was afraid for her safety. She had no one to call. Ramos could not call her mother; Wells had told her she would call her. She did not consider reporting the crime to the police because Haverly said that no one would believe they did not know about it.

Ramos testified that the last time she saw Phillips was the morning after the attack. When Haverly returned to the motor home, he gathered blankets, pillows, and food. Ramos did not know what was happening. She did not know at that time that Phillips had attacked Wells, but she suspected it. Ramos and Haverly went to the beach, where they met Phillips. Ramos thought Phillips was going to stay on the beach.

Ramos drank that day and the following day. She was drunk when she visited her children.

Ramos went with Haverly to Arizona, missing an important dependency court hearing. Haverly told her that he had a friend from jail who owed him money. She had no idea Haverly was going to sell the van. Ramos was upset to lose the children's toys and DVDs. She did not tell Haverly that they needed to get rid of the van, and it did not occur to her that by selling the van they



were concealing evidence of a crime. They returned home by bus, which was very stressful for Ramos.

When they returned to California Ramos continued to see the children weekly; went to parenting classes; maintained contact with the rehabilitation program she was waiting for; and drank a lot. She tried to report that the van had been stolen because Haverly's mother needed a police report for an insurance claim. They had little money left, and Haverly's parents were bringing them food, paying the rent for the parking space for the motor home, and giving them money. They depended on Haverly's parents for transportation. During this time Ramos talked a lot with her uncle. She did not tell the police, Wells, or Sheaff who had attacked Wells.

The police arrested Ramos and Haverly on November 14, 2013. In jail in Long Beach, she received medication for alcohol withdrawal that made her tired. She was awakened when detectives wanted to interview her. The only thing she remembered about the interview was asking for a lawyer.

## 2. Ramos's Witnesses

A nurse who worked in the Long Beach jail testified that Ramos received Librium, a medication given for alcohol withdrawal. A toxicologist testified that the medication was a tranquilizer, and that he believed that the amount administered to Ramos would act as a sedative and could possibly impact cognition.

Collier spoke with Sheaff after Ramos's arrest. Sheaff thought that it would be a conflict of interest for him to give trust money to Ramos to pay for an attorney for a crime in which his sister was the victim. Sheaff said that if Ramos was convicted of attempted murder, he would seek to end payments to her.



## E. Evidence Presented by Phillips to All Three Juries

### 1. Phillips's Testimony

As of September and October 2013, Phillips and his wife were divorced but lived together with their son. Phillips had taught for nearly a decade but his alcoholism cost him his career. Phillips had been convicted of assault with a deadly weapon and spousal battery.

Phillips met Haverly in jail in 2002. Haverly was confronting his substance abuse problem, and Phillips became his mentor. They read the Bible together. Their relationship lasted for five or six months; when Phillips was released he returned to his family and had no contact with Haverly until 2013, when they were in a jail dorm together. There were no cells in the dorm; it was a wide-open living space and the inmates had open access to each other. Phillips recognized Haverly, but he was "totally different": he did not look good, he had lost weight, and he looked like he could use a friend.

Phillips and Haverly were in jail together for approximately one month, during which time they discussed their families. From Haverly's description, Phillips thought one of Haverly's children had autism. Phillips's ex-wife taught preschool to autistic children in King City.

Haverly told Phillips that Wells was meddlesome and that they disliked each other. Phillips understood that while Haverly was in jail, Wells had begun trying to take the children. Haverly said that Wells was well off financially and that she had discontinued financial support to the family. He told Phillips that Wells lived in an expensive house in Long Beach.

Phillips had long worked on a series of books about the California missions. He and his then wife, now ex-wife, had done



research, created characters, and located an illustrator. While in jail in July 2013, prior to meeting Haverly again, Phillips returned to his book as a means of proving himself to his ex-wife. Their estrangement had limited his access to his son, and he did not like that because he loved his son.

Phillips falsely told his ex-wife he had secured a lucrative book deal. He wrote a letter to his son stating that he had received \$8,000 and that he expected \$10,000. Phillips said that he thought if the book took all the time he was in the VA facility he would receive the funds the following March, but if he was able to sell it immediately he would have money by Halloween. Phillips had completed a manuscript of the book.

While they were in jail, Haverly began taking drugs. When he was under the influence, Haverly's conversations were almost nonsensical. He was distraught about Wells trying to gain custody of the children, and he said, "I have got to keep them from her, there has got to be a way." He wished that he had money, because he could not pay for the expensive legal representation that Wells would be able to afford. Several times Haverly asked Phillips if he would help him get his children. Phillips had told Haverly about schools for the children, and he understood Haverly's request to be a request for similar help. Phillips said he would help Haverly. While they were in jail Haverly never asked Phillips to harm Wells.

Because Haverly owed money for drugs, he asked Phillips if he (Haverly) could put money in Phillips's jail account to circumvent the weekly spending limit at the commissary and pay back his debts with commissary items.

Phillips was released from jail on September 20, 2013, two days before Haverly's release. On the day Haverly was released,



he and Phillips visited a storage facility where Haverly packed up some possessions. While packing, Haverly handed Phillips a heavy, solid metal bar with tapered ends and told him to put it in the van. Haverly gave Phillips some shoes, jeans, and shirts, and he bought him a black coat, white shirt, and black tie at a thrift store. Haverly said, “You could use this for Long Beach,” which at the time meant nothing to Phillips.

Phillips stayed with Haverly in the motor home for one night, and then he went to housing arranged by a probation officer until October 1. During that time he spent his days in a library and his nights at the halfway house. He had no contact with Haverly.

Phillips began his alcohol rehabilitation program at the VA facility on October 1. He could not leave without permission. Phillips was lonely in the program so he telephoned Haverly in early October. During that conversation Phillips mentioned that he was going to see a doctor in Salinas.

On October 9, Haverly approached Phillips in Salinas. Haverly was drunk and under the influence of drugs. He looked sweaty, horrific, and scary. Haverly said that he had been looking everywhere for Phillips and that he had been to his family’s two houses, which was odd since Haverly knew Phillips was at the VA facility. Haverly told Phillips, “We are going to go down, rob Betsy [Wells].”

Phillips refused. Haverly told Phillips, “Well, I don’t want to do it, but I need your help. I been [*sic*] counting on you. You are the only one that knows my plan.” Then he said that he would hurt Phillips’s family if Phillips told anyone, went to the police, confided in his ex-wife, or failed to follow instructions. Haverly said that “the Northerners” would hurt Phillips’ family



because they owed Haverly a favor. Haverly had a Northern California tattoo on his chest, and he bragged about his contacts in the Norteño street gang of Salinas.

Haverly told Phillips to rob Wells in Long Beach. Ranting and raving, Haverly said, “She needs to go to the hospital. Put her in the hospital so she can’t take the kids.” Phillips believed that Haverly would harm his ex-wife and son if he did not comply.

On October 10, the facility staff told Phillips that his brother had telephoned with news of an accident. Phillips telephoned the number that the caller had left, which was Haverly’s phone number. Haverly told Phillips, “Play along with this or you know what’s going to happen. We already talked about it.” He continued, “Your son has been in an accident in Texas. I am going to come and get you. You have to go.”

Haverly picked Phillips up from the facility; Ramos was in the van. Haverly and Ramos were drinking rum. Phillips declared he did not want to hear anything Haverly had to say, and he went to sleep.

It was after 5:00 a.m. on October 11 when they arrived at the motel. They went into the motor home, where over the course of the morning Haverly “unveiled his master plan.” He told Phillips to identify himself as a representative of the social services agency who was there for a home visit. He gave Phillips the name “Richards.” Haverly told him what to say, how to get in, and what to do once inside the house. He told Phillips about envelopes of money in Wells’s purse and directed him to use the bar Phillips had placed in the van to put Wells in the hospital so she would not be fit to take custody of the children. Phillips



thought the bar was so heavy that it would kill anyone hit with it.

One minute Haverly would say that Phillips was his best friend; the next minute he would threaten Phillips that the Norteños would set a fire at his home and no one would escape. During this conversation, Ramos spent most of the time in the motor home's bedroom; when she did emerge, she was "sloppily inebriated."

Phillips went to Long Beach because he believed Haverly would hurt his son if he did not. On the way he stopped at a truck stop and stole an aluminum tire checker because it was hollow and lighter than the bar in the van. Phillips had no money and feared he would run out of gasoline before reaching Long Beach. He planned to purchase gasoline for the return trip with the money he would take from Wells. Haverly said there would be "plenty of money" in her purse.

When he arrived in Long Beach, Phillips changed into the black jacket and tie Haverly had directed him to wear. He parked the van and sat for 20 minutes because "I couldn't do it." He had mental images of his son and his house on fire. Phillips left the car, bringing the tire checker in a black computer bag.

Phillips knocked on the door and identified himself as Keith Phillips from Monterey County Child Protective Services. Wells let him in, and they spoke for approximately 30 minutes. Wells was friendly and talked about Ramos and Haverly. She told Phillips about the checks that they had cashed and gave Phillips copies of the checks. To demonstrate that her signature had been forged, Wells produced her driver's license from her purse. Phillips did not touch it because he was not wearing gloves. He could see into the purse and thought about just taking



it and fleeing, but he did not see any money inside and he feared that Haverly would follow through on his threats unless Phillips injured Wells. During their conversation, Wells told Phillips that Ramos was greedy but that she had set up a trust that would exclude Ramos but provide for the grandchildren once she died.

While Phillips toured the house he agonized about harming Wells to save his son's life. With the image of his son trapped in a bedroom of their burning home, Phillips hit Wells in the back of the head in an attempt to knock her unconscious. He hit her again when she screamed.

Wells began crawling down the stairs. Phillips tried to follow but he slipped on blood and landed on Wells. The tire checker flew out of his hands. Phillips asked Wells to "please stop screaming," but she did not comply. He put his hand over her mouth. At that point, Phillips had an epiphany: Wells was not unconscious, but she was hurt very badly and there was a lot of blood. "You did it," he thought. "Now go." Phillips stood, went downstairs, grabbed the tire checker, took Wells's purse from the living room, and left the house. He felt sick at what he had done.

Phillips ran to the van and drove away, throwing the shirt and the tie out the window along the way. He used the \$30 or \$40 he found in Wells's purse to purchase gasoline, and then used her credit card to buy more gasoline in the Grapevine area as he drove north. When Phillips returned to the motel, he and Haverly drove to the beach, where Haverly tore the GPS unit out of the van and threw it in the trash. They all went to Haverly's parents' house, where Haverly and Ramos cleaned out the van and washed it.

Phillips was arrested on November 14, 2013. He was placed in a cell with men who identified themselves as "Green



Eyes” from Coyotes and “Monster.” Phillips thought they were South Side gang members and was intimidated. The men insinuated that Phillips had given the police information about Haverly, and Phillips knew that people who gave information to the police in jail would be killed. When Phillips asked if the men were police officers, one of them stood over him and Phillips feared he would be hit. He tried to go along with whatever the men said because there were two of them, and one of the men was a lot bigger than Phillips. Phillips was trying to “sound as street” as he could, to talk in the language that the men wanted to hear.

## 2. Phillips’s Witnesses

The Long Beach police officer who interviewed Wells and photographed her injuries on the evening of the attack testified that Wells said that she had been hit in the head. She said she did not immediately understand what was happening, but when she realized who was hitting her she began to cry out and call for help. She began to crawl down the stairs, screaming as she went. Wells said that she believed that her left index finger “came apart” as she crawled down the stairway. On cross-examination, the officer testified that he had seen many injuries in the past and that the injuries that Wells suffered were out of the ordinary. He first spoke to Wells at her home while she was on a gurney. Wells said that her first statement to her attacker had been, “What’s going on?” She also said that her assailant had “a look of evil” and that he had hit her as many as nine or ten times.

A private investigator testified that he went to a truck stop near the Grapevine area and found wood and aluminum tire checkers available for sale there. On cross-examination, the investigator testified that he visited the truck stop in November



2015, shortly before his trial testimony. He did not know how long the truck stop had been carrying the tire checkers.

Ramos's phone was not used after October 4, 2013, and her service was terminated October 11, 2013. Between September 30 and October 4, 2013, Haverly's telephone was used to call Ramos's phone and Phillips's phone. On the 22nd or 23rd of September there were two calls from Phillips's phone to Haverly's phone. Between September 30 and October 4 there were two calls from Haverly's phone to Phillips's phone. There were six calls between Ramos's phone and Phillips's phone. On October 10, 2013, six calls were made from Haverly's phone to the VA facility.

Collier testified that the surveillance video from the motel showed the van leaving the motel on the night of October 10, 2013, and returning the following early morning. Three people left the van when it returned.

## **DISCUSSION**

### **I. Phillips's Statements to Undercover Agents (Haverly and Ramos)**

Haverly and Ramos contend that admitting Phillips's statements to the agents who were posing as inmates violated their state and federal rights to confront the witnesses against them and to a fair trial.

First, they contend, the statements were inadmissible testimonial hearsay under *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). Assuming for the sake of argument that the statements were testimonial, there was no confrontation clause violation. Phillips testified at trial and was subject to cross-examination. "[W]hen the declarant appears for cross-



examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements.” (*Crawford*, at p. 59, fn. 9.)

Haverly argues, however, that even though Phillips was subject to cross-examination, the undercover agents were not, and that they were therefore witnesses against the defendants who were not subject to confrontation. Haverly has not demonstrated that the statements made by the undercover agents in the recording were offered for the truth of the matters asserted. Even if we were to assume that the agents’ statements were testimonial, the confrontation clause “does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.” (*Crawford, supra*, 541 U.S. at p. 59, fn. 9.)

Alternatively, Haverly and Ramos contend that even if Phillips’s statements were not barred by *Crawford*, they were inadmissible under *People v. Cervantes* (2004) 118 Cal.App.4th 162 and *People v. Greenberger* (1997) 58 Cal.App.4th 298 because they lacked trustworthiness. In determining whether a statement is “sufficiently trustworthy to be admissible, the court may take into account not just the words but the circumstances under which they were uttered, the possible motivation of the declarant, and the declarant’s relationship to the defendant.” [Citation.]” (*People v. Grimes* (2016) 1 Cal.5th 698, 711.) We review the trial court’s ruling for an abuse of discretion (*People v. Valdez* (2012) 55 Cal.4th 82, 143) and find none here. When speaking with the undercover agents, Phillips inculpated himself as the person who had beaten Wells to the point where he thought she was dead. He did not attempt to shift blame onto the others, but took responsibility for attacking Wells and indicated



that he was the person who carried out the plan that he and the others had made. He did not boast or brag about his participation; to the contrary, he said he was scared, expressed surprise that Wells had survived, and focused on who might be talking with the police and how the trio could avoid punishment for the crime. Although Haverly contends that Phillips made these statements because he was intimidated by the undercover agents, the conversation was friendly, and the agents consistently warned Phillips about the police, Haverly, and Ramos. Phillips's statements, moreover, were consistent with the other evidence that the three participated in the crime. We cannot say that the trial court abused its discretion in concluding that the statements were sufficiently trustworthy to be admissible.

Finally, Haverly and Ramos contend that the trial court erred when it refused Haverly's request, joined by Ramos, that the court instruct the jury that the statements of the undercover agents were not to be taken as true. The court asked Haverly's counsel, "Some statements are, in fact, true, are they not?" Haverly's attorney responded that many of the statements were false.

The court declined to sort through every statement by the agents: "Well, I don't know which ones are true, which ones are not. I am not going to go over this statement . . . . The way to do it is, when there is a ruse, and it is not any different than when [a] detective is interviewing [a] defendant with a ruse, you could always call the detective, ask the detective, there is page what, page 9, line 5, according to this, one of the . . . agents said that Frank Haverly said X, Y, Z, and that, to your knowledge, is that



true or not?” “[T]hat’s how you deal with a ruse question,” the court advised counsel.

Haverly’s counsel proposed examining the agents about their statements. The court responded that the agents were not needed because the conversations had been recorded and the detective in the case could respond to questions about the ruse. The court said it would be too time-consuming for it to sort through every single question and determine if it was offered for the truth of the matter. He told the defense, “[Y]ou could call the detective and you could cross him just like any other investigation involving ruse investigations. So I think that’s the way to do it.”

Subsequently, the detective who set up the undercover operation testified about the operation, the agents involved, the information the agents received prior to the operation, and the design of the ruse itself. Haverly and Ramos elected not to cross-examine the detective about the truth of the various statements made by the agents during the undercover operation.

Although they argue that the refusal to instruct the jury prejudiced them, neither Ramos nor Haverly have demonstrated that the opportunity to cross-examine the detective about the ruse was insufficient to permit them to identify for the jury any statements made by the agents during the undercover operation that were not accurate representations of what Haverly had told the police. They have not established any prejudicial error.

## **II. Prosecutorial Misconduct (Haverly and Ramos)**

Haverly and Ramos each allege prosecutorial misconduct. “The applicable federal and state standards regarding prosecutorial misconduct are well established. “A prosecutor’s . . . intemperate behavior violates the federal



Constitution when it comprises a pattern of conduct “so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.”” [Citations.] Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves ““the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.”” [Citation.]’ [Citation.]” (*People v. Hill* (1998) 17 Cal.4th 800, 819 (*Hill*)). To preserve a claim of prosecutorial misconduct for appeal, a defendant must make a timely objection, make known the basis of the objection, and ask the trial court to admonish the jury. (*Id.* at p. 820.) Unless an objection would be futile or the prosecutor’s misconduct could not be cured by an admonition, the defendant must object to the alleged misconduct at trial. (*Ibid.*)

#### A. Haverly’s Arguments

Prosecutor L.<sup>5</sup> impeached Haverly’s testimony with statements he had made in recorded telephone calls with Ramos. In one instance, Prosecutor L. played for the jury a recording that she had edited to excise portions of the conversation. Prosecutor L. did not disclose, and the recording and transcript did not indicate, that material had been removed.

While being cross-examined by Ramos, Haverly testified that the recording was edited and was not the full conversation. Prosecutor L. objected, prompting a sidebar conference. At sidebar, Prosecutor L. asserted that she did not have to tell the

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<sup>5</sup> Two attorneys represented the People at trial. Where necessary to distinguish between them, we refer to them as “Prosecutor L.” and “Prosecutor B.”



defense “exactly where my cross[-examination] is going to go. These are all statements that you all had from the beginning.”

The trial court said to Prosecutor L., “You did edit it. You did not include that portion. So that means you are vulnerable to attack that not everything was played. That’s the way the nature of the game is. So if they present that as part of their cross, they could do that, then [what] you could do on your recross [i]s to maybe play the whole thing and see if there was anything that was taken out of context. That’s how it goes.”

The court told defense counsel, “the correct way of resolving this issue is, if [Prosecutor L.] only plays certain portions of the statement from that particular tape, then you should ask him whether or not that—which is what you are doing—whether or not that is his entire conversation.” “And then you could come back on your recross,” the court told Prosecutor L., “and clarify what it is meant by editing, that they were not created, but they were cut in areas . . . .” When cross-examination resumed, Haverly testified that the previously played recorded call had been edited and portions of the conversation removed.

The following day, on redirect examination, Prosecutor L. raised the issue of the edited recording. Haverly testified, “I just remembered the conversation not going the way it was played for this jury.”

Prosecutor L. asked, “So there was [*sic*] some important items showing your innocence that was [*sic*] removed from that conversation?” The trial court sustained Haverly’s objection that the question shifted the burden of proof, and, at Haverly’s request, instructed the juries that the People had the burden to prove every element of the crime beyond a reasonable doubt. Prosecutor L. then played the full telephone call.



On appeal, Haverly (joined by Ramos) argues that Prosecutor L. committed misconduct when she played the edited recording and when she “demand[ed] that [Haverly] demonstrate how the omitted material was exculpatory.” The People argue that the editing was not misleading and that Prosecutor L. did not shift the burden of proof with her question.<sup>6</sup>

Prosecutor L.’s conduct in presenting an edited recording without disclosing that she had made edits was improper. (*In re Ferguson* (1971) 5 Cal.3d 525, 531 [prosecutor’s duty is “to fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial”].) When defense counsel raised the issue, the trial court took appropriate corrective action, determining that the defense properly could

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<sup>6</sup> The People also assert that “[l]ater in the proceedings, the trial court stated that the prosecutor had done nothing improper, and had simply presented an edited version of the conversation highlighting what she thought was relevant.” The record does not support this assertion. In the later proceeding, the court refused the prosecution’s request for a pinpoint instruction stating, “All parties in this case ha[ve] had access to all recordings. [The] court has made rulings on what is relevant and allowed to come before you. Do not speculate as to what recordings were not presented before you.” Prosecutor L. claimed to have been accused of “misrepresenting the evidence,” and the court corrected her, saying that the defense had argued only that the prosecution had presented some recordings in full and others “in [an] edited version that only highlights certain parts.” The court advised Prosecutor L. that the defense was free to make that argument, and that she could respond in her rebuttal that all the recordings were played. At no time in this exchange did the court state that Prosecutor L.’s conduct had been proper.



inquire into the editing of the recording and that on rebuttal Prosecutor L. could then present the recording in full.

We agree that the trial court's actions were warranted and appropriate to cure any possible prejudice arising from Prosecutor L.'s actions. Although Haverly and Ramos argue that the juries were incurably tainted and could not fairly assess the evidence of the conversations between Haverly and Ramos because of Prosecutor L.'s conduct, this conduct could not possibly have prejudiced them because the juries not only learned that Prosecutor L. had edited the recording but also heard the recording in full. If anything, the episode was more likely to have damaged the credibility of the prosecution when Prosecutor L.'s conduct became known to the juries. Nothing suggests that this conduct infected the trial with such unfairness as to make the conviction a denial of due process, or that had this event not occurred, it was reasonably probable that the outcome would have been more favorable to Haverly or Ramos. (*People v. Carter* (2005) 36 Cal.4th 1215, 1264-1265; *Hill, supra*, 17 Cal.4th at p. 820.)

Prosecutor L.'s question asking Haverly if the portions of the conversation that she had edited out of the recording proved his innocence was also improper. It is error to indicate to the jury that "a defendant has a duty or burden to produce evidence, or a duty or burden to prove his or her innocence." [Citations.]” (*People v. Centeno* (2014) 60 Cal.4th 659, 673.) The trial court promptly and correctly admonished the jury that the prosecution bore the burden of proof. We presume the jury followed the court's instructions. (*People v. Thomas* (2012) 54 Cal.4th 908, 940.) The court's admonition cured any prejudice.



## B. Ramos's Contentions

### i. The Sapphire Ring

Ramos claims that Prosecutor L. committed misconduct by misleading the trial court and the jury with respect to a sapphire ring. First, she alleges that Prosecutor L. misrepresented Ramos's testimony to the trial court at a sidebar conference. Second, she contends that Prosecutor L. misled the jury about the ring in closing argument.

As Ramos observes, in a sidebar conference Prosecutor L. inaccurately represented a portion of Ramos's prior testimony in support of her request to play a recorded conversation on rebuttal. A prosecutor's "“vigorous” presentation of facts favorable to his or her side “does not excuse either deliberate or mistaken misstatements of fact.” [Citation.]’ [Citation.]” (*People v. Jackson* (2016) 1 Cal.5th 269, 349 (*Jackson*)).) Ramos does not acknowledge, however, that her counsel immediately and vehemently challenged the truth of Prosecutor L.'s representation; that Prosecutor B. told the court that she did not recall whether Ramos testified as Prosecutor L. had represented; that Prosecutor B. argued a ground for admitting the rebuttal evidence that did not rely on the misstated fact; and the trial court ruled that the rebuttal evidence was admissible based on Prosecutor B.'s argument, not Prosecutor L.'s misstatement. Prosecutor L.'s statement, therefore, did not infect the trial with such unfairness as to make the conviction a denial of due process, nor can we say that it was reasonably probable that the outcome would have been more favorable to Ramos if Prosecutor L. had not made the statement. Ramos has not established prejudicial misconduct here.



As for Prosecutor L.'s reference to the ring in closing argument, Ramos did not object to this argument, and she has therefore forfeited this claim on appeal. (*Hill, supra*, 17 Cal.4th at p. 820.) Even were the claim not forfeited, however, Ramos has not established misconduct. Prosecutors' arguments may be vigorous as long as they are fair comment on the evidence, including reasonable inferences or deductions to be drawn from the evidence. (*Jackson, supra*, 1 Cal.5th at p. 349.) The recorded call was played for the jury as rebuttal evidence. Ramos does not assert that the trial court erred in admitting this evidence on the grounds upon which it ultimately relied, nor do we identify any abuse of discretion in the court's ruling. The rebuttal evidence, therefore, was properly admitted, and Prosecutor L.'s reference to the ring was a fair comment on that evidence.

ii. Inquiries into Wells's Well-Being

Ramos argues that the prosecutor wrongly led the jury to believe that she never asked about her mother's well-being after the attack.

The prosecutor asked Collier whether Ramos had expressed concern for her mother's well-being during her post-arrest police interview. Ramos objected, and the court held a lengthy discussion at sidebar. Ultimately, the court agreed with Ramos that Collier's expected answer to that question would entitle her to present additional evidence. The prosecutor elected to withdraw the question. The court instructed the jury that the question had been withdrawn. The jury had previously been instructed that counsel's questions are not evidence.

Ramos argues that the question and its withdrawal prejudiced the jury against her and that the withdrawal of the question was a ploy to make it impossible for the defense to



introduce the evidence that would have dispelled the impression left by the question. Ramos, however, did not object in the trial court to the withdrawal of the question or argue that the question itself was prejudicial to her. She has therefore forfeited this claim on appeal. (*Hill, supra*, 17 Cal.4th at p. 820.) But even if the argument had not been forfeited, we find no misconduct in this quotidian courtroom event involving a jury that was properly instructed.

Ramos also contends that in closing argument, the prosecutor inaccurately and prejudicially “argued that [Ramos] never ever called her mother to ‘see how she is doing.’” She claims that the prosecutor’s assertion was inaccurate because she telephoned Wells twice after the attack. While this argument, too, has been forfeited by the failure to object, we discern no misconduct here. We have reviewed the portion of the closing argument on which Ramos relies. In that passage, the prosecutor did not say that Ramos “never ever” called her mother after the attack. Instead, the prosecutor argued that Ramos’s failure to contact Wells on the day of the attack belied her claims of love, concern, and closeness with her mother. The prosecutor next argued that Ramos’s failure to call Wells on the night of the attack indicated that she expected Wells to have died in the attack. We identify nothing improper in this argument.

### **III. Evidentiary Issues**

#### **A. Lay Opinion Testimony (Haverly)**

Haverly argues that his due process right to a fair trial and his right to a jury trial were violated when the court permitted Collier to testify concerning his opinion of what Haverly appeared to be carrying in his hand in surveillance camera footage from



the date of the attack on Wells. We review the court's ruling for an abuse of discretion. (*People v. Leon* (2015) 61 Cal.4th 569, 600 (*Leon*).)

We conclude that it was error to permit Collier's lay opinion testimony as to what Haverly was carrying in the surveillance footage. Lay opinion testimony must be rationally based upon the perception of the witness and helpful to a clear understanding of his testimony. (Evid. Code, § 800.) Here, although Collier had not been present at the scene and did not purport to have ever seen the item Haverly was carrying, he opined, based merely on having watched the video repeatedly, that the item was cylindrical.

The People argue that the opinion testimony was properly admitted, relying upon cases concerning lay witness testimony on identity. While identity is a proper subject of nonexpert opinion (*Leon, supra*, 61 Cal.4th at p. 601), most of the cases upon which the People rely involve witnesses comparing what can be seen in photographs or surveillance footage with that which they perceived personally at or about the time of the events depicted.<sup>7</sup>

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<sup>7</sup> The only case cited by the People in which the witness testified to identity without personal perception of the person or item identified was *People v. Larkins* (2011) 199 Cal.App.4th 1059, 1067-1068, in which a loss prevention manager testified that he recognized the man in a surveillance video because he had seen the man in 20 to 30 previous videos. The court reasoned that while viewing the many videos, the manager had acquired personal knowledge of distinguishing characteristics such as the subject's posture, gait, and body movements. (*Id.* at p. 1067.) Here, Collier did not develop knowledge of the item's characteristics by seeing it in multiple videos; his testimony was based only on what the jury itself saw: one surveillance video.



For instance, in *Leon*, the officer testified that the car in a surveillance video looked like the car the defendant crashed while fleeing from the police because the body color, wood paneling, luggage rack, and the appearance of a license plate were similar; and that the jacket and cap the person in the video wore looked similar to the jacket he had seen the defendant wearing when arrested and the cap found in the defendant's car. (*Id.* at pp. 600-601.) Officers may predicate their opinion as to identity on contacts with the defendant, their awareness of his physical characteristics at the time of the events, and their perception of the footage taken. (*Id.* at p. 601.) As the court said in *People v. Perry* (1976) 60 Cal.App.3d 608, also cited by the People, "The statutory and decisional law permitting lay opinion testimony on the question of identity is limited to opinion founded on personal perception." (*Id.* at p. 613.)

Here, Collier lacked any personal knowledge to bring to bear on interpreting the images in the surveillance video; he simply testified to his opinion based on having watched the footage many times. His testimony was speculative, not based on personal knowledge, not helpful to a clear understanding of his testimony. We conclude, however, that the error was harmless under any standard. Collier testified that he had no training in identifying objects or faces, or in analyzing video footage, and that he performed no analysis of the footage, such as slowing it down or comparing the images frame by frame. He was subjected to extensive cross-examination, in which he readily admitted that he could not say with any degree of certainty that the object in the video was cylindrical; that it could be something else; and that he "would not say" that the bat-like item admitted into evidence at trial was the same object that he saw in the video.



Ultimately, Collier said, “I testified it was a cylindrical object. Maybe it was that, maybe it wasn’t. I don’t know if it was obtained after someone left from Monterey, [or] prior to loading up. I just went on the best sort of logical course I could follow.” During Phillips’s defense case, Collier testified that he knew at the time he formed his opinion of what the footage showed that Phillips had told him that he shoplifted the weapon he used to attack Wells while on his drive to Long Beach. Collier agreed that it was not possible for an item to have been present in Monterey if it was not acquired until hours later in the Grapevine area.

The video that Collier watched was also shown to the jury, so it could reach its own conclusion about the object in Haverly’s hand. Haverly and Phillips both testified that the object shown in the video was car keys on a lanyard, and Haverly presented an expert witness to testify that, based upon his detailed analysis of the video, the object shown was in fact a flexible, curved object and not the club used to attack Wells. The jury was also reminded in closing argument that the determination of what was shown in the video was the province of the jury alone.

#### B. Admission of Ramos’s Statements (Ramos)

While in police custody Ramos was questioned by Collier and another detective. At the start of the interview, after a few questions concerning her educational and employment background and her family, Collier advised her that he wanted to speak with her and get her side of the story. He then advised her of her *Miranda* rights, and Ramos confirmed that she understood them. Ramos immediately challenged Collier, asking, “Now, why is it that I should talk to you without a lawyer present?” Collier responded that he was not an attorney and was not giving her



legal advice, but that this was her opportunity to tell her side of the story. He told Ramos that he had heard Wells's account and seen the evidence, that the situation was serious, and that this was her time to tell the police what had occurred.

"But anything I say, like you said, can be used against me in a court of law," Ramos countered.

Collier said, "Uh-huh."

"And, um, can be used against other people," she continued.

"Uh-huh," Collier again responded.

Ramos asked, "So, I mean, bottom line is what's in it for me?" She asked whether, if she spoke with the police, "whatever happens to me, is, you know, you're gonna look at what I say and maybe a leniency of some type or—"

Collier immediately interrupted Ramos to end the leniency inquiry: "I'm making you absolutely no promises. That would be improper of me. I'm not a district attorney, neither is he [the other detective present for the interrogation]." Then, responding to her question about why she would talk to the police, Collier observed that ultimately everyone must "look out" for themselves. "What I'm telling you at the end of the day in just life terms, who looks out for you at the end of the day when everything else is gone? You do, right? When it comes down to it in life, we look out for ourselves."

Ramos said that she and Haverly looked out for each other. She then said, "So I suppose what I'm saying is perhaps it would be better if I have a lawyer present."

Collier said, "Okay," but that once she had a lawyer she would not be "as free" to give her side of the story.

Ramos asked what he meant, saying, "I can give my side of the story to the lawyer just as easily as I can to you."



Collier answered, “Yeah. It’s a little more difficult to, to introduce.” He confirmed that Ramos knew that Haverly and Phillips were also in custody, and he asked if she thought that “everyone’s gonna sit there and hold this thing up?”

Ramos said that what the others did and what she did were different things. She said she had read police reports that involved her and “gosh darn if there weren’t a million things in there that did not, you know, fly.”

Suggesting that he had no motive to misrepresent her statements, Collier responded, “Well, you didn’t do this to me or anyone I care about.” He showed Ramos the recording device and told her she was being recorded.

Collier said that it appeared Ramos was thinking about herself and Haverly, and not about her children and Wells, “the people who are outside who have been impacted by this.” “You need to stop thinking about you or you and [Haverly]. There’s more to this world than the two of you.”

Ramos said that it did not seem like she was going to be present in her children’s lives, to which Collier said that he did not know what the outcome would be, he simply gathered information. He told Ramos that from the way she was acting it seemed she was worried about herself and did not care about what else was going on. Ramos told him that was not true. She protested that she had been going through “nothing but grief and so have my sons,” but there was nothing she could do to bring the children home.

Collier asked Ramos, “Don’t you want to explain yourself?”

“My explaining myself isn’t really the issue here,” Ramos retorted. “I mean, we all know who—who did it, who physically did it, right?”



“Uh-huh,” Collier said.

“What you’re trying to do is—is find out the role between Frank [Haverly] and I or however whatever. You know how the two knew each other, correct?”

Collier said he did, and she asked, “How?”

“In and out of jail throughout the years,” Collier answered.

“Right,” said Ramos, and she proceeded to tell the detectives that Haverly and Phillips made a plan while they were in jail; that when she was released, “the wheels were already in motion in their heads”; that she told them it was a stupid idea and she loved her mother; that she had not thought Phillips would do anything that she had said was not a good idea; that Haverly picked Phillips up from the VA facility; that she thought he was going to see his son; and that she had no idea what he was going to do until she heard from Sheaff that Wells had been attacked.

Ramos asserted that Phillips took it upon himself to attack Wells; they had not paid him; that she had a panic attack thinking about her mother on the day of the attack; and that she saw her attorney and had a court appearance that day. She said there was a “harebrained scheme that was concocted in . . . jail was just that. I mean, it wasn’t like anyone was on drugs or anything like that.”

When the second detective asked what the scheme was, Ramos said, “Anyway, I’m thinking I’m saying probably too much.”

Collier changed the subject, and Ramos admitted writing checks on Wells’s account without her knowledge. She confirmed that Haverly’s mother had deposited a check as well, but said they had reimbursed her. Collier asked if it was correct that



Haverly and Ramos had used two vans, that Wells rented an apartment for Ramos and the children, and that she bought a van for Ramos to use. Ramos responded, “I think I’d like to have a lawyer present.”

Although the conversation continued, during which time Ramos told the police that she would be “more forthcoming” if she could avoid life in prison and demanded, “[W]hat was the point of talking to you in the first place?” when Collier again told her that he could not make any such offer, the trial court ruled that the interview was admissible only until the point where Ramos said she would like to have a lawyer present.

Ramos argues that the admission against her of the statements she made during the interrogation violated her rights under *Miranda v. Arizona* (1965) 384 U.S. 436 (*Miranda*). The Fifth Amendment to the United States Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself. . . .” (U.S. Const., 5th Amend.) In *Miranda*, the United States Supreme Court “‘adopted a set of prophylactic measures to protect a suspect’s Fifth Amendment right from the ‘inherently compelling pressures’ of custodial interrogation.’ [Citation.]” (*People v. Linton* (2013) 56 Cal.4th 1146, 1171.) Under *Miranda* and its progeny, “‘a suspect [may] not be subjected to custodial interrogation unless he or she knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel.’ [Citation.]” (*People v. Dykes* (2009) 46 Cal.4th 731, 751.) To be valid, a *Miranda* “waiver must be ‘voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception’ [citation], and knowing in the sense that it was ‘made with a full awareness of



both the nature of the right being abandoned and the consequences of the decision to abandon it.’ [Citation.]” (*People v. Saucedo-Contreras* (2012) 55 Cal.4th 203, 219.) In reviewing a defendant’s claim that his or her *Miranda* rights were violated, we accept the trial court’s resolution of disputed facts and inferences, as well as its evaluation of the credibility of witnesses where supported by substantial evidence. (*Id.* at p. 217.)

Ramos argued to the trial court that the entire statement was inadmissible because it was coerced. The court rejected this argument and ruled that Ramos had been advised of her *Miranda* rights and did not unambiguously invoke her right to counsel until she said, “I think I’d like to have a lawyer present.” The court ruled inadmissible all statements after that invocation.<sup>8</sup>

The trial court’s ruling was correct. The recording of the interrogation contains no evidence of coercion. To the contrary, the recording demonstrates that Ramos, a well-educated adult, was fully aware of her rights, understood the purpose of the interrogation, and repeatedly (though unsuccessfully) attempted to negotiate leniency in exchange for her statement.

While she did not expressly waive her *Miranda* rights during the interview, Ramos did so implicitly by voluntarily answering the detectives’ questions after acknowledging that she understood those rights. (*Berghuis v. Thompkins* (2010) 560 U.S. 370, 384 [“[w]here the prosecution shows that a *Miranda* warning

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<sup>8</sup> The prosecution later asked the court to reconsider its ruling and to permit more of the interview to be admitted on the grounds that Ramos had not invoked her right to counsel and that she initiated further conversation, but the court rejected this contention and did not alter its prior ruling.



was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent"].) Considering the totality of the circumstances, Ramos's initial references to attorneys were not unambiguous requests for counsel but negotiating gambits: She wanted to know what Collier would give her in exchange for her statement. When her question of "what's in it for me" was met with an unequivocal rejection of negotiations for leniency, she said that she "suppose[d]" that "perhaps" it would be better for her to have an attorney. (See *People v. Williams* (2010) 49 Cal.4th 405, 432-433; *People v. Davis* (2009) 46 Cal.4th 539, 587-588.) If a statement is not an unambiguous or unequivocal request for counsel, officers have no obligation to cease questioning. (*Davis v. United States* (1994) 512 U.S. 452, 461-462; *People v. Martinez* (2010) 47 Cal.4th 911, 947-948.) As the trial court observed, Ramos did not unambiguously invoke her right to counsel until after she had made a series of incriminating statements, and the trial court properly ruled that the interrogation was admissible up to that point. Ramos has not established any error.<sup>9</sup>

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<sup>9</sup> On appeal, Ramos mentions medication she had been taking at the time of the interrogation and asserts that Collier did not seek to clarify her intent when she mentioned counsel. As it appears from our review of the record that coercion was the sole ground upon which Ramos sought exclusion of her statements in the trial court, we need not consider these contentions on appeal.



C. Exclusion of Evidence about Wells (Ramos and Haverly)

Ramos, joined by Haverly, argues that the trial court deprived her of her right to present a defense and to a fair trial when it excluded evidence of Wells's "Unpleasant Personality" to explain why they initially opposed Wells taking custody of the children. The court ruled that to the extent the evidence had any relevance, it was inadmissible under Evidence Code section 352.

Ramos asserts that as a whole, the court's rulings prevented her from countering the prosecution's theory that she conspired to kill Wells to prevent her from taking the children. She argues that the excluded evidence of Wells's bad behavior was offered to demonstrate that Ramos's concerns about Wells taking the children were reasonable; that the evidence was relevant to Ramos's state of mind; and that the exclusion of the evidence resulted in a one-sided view of Ramos and Haverly as liars for claiming that there were reasons they did not want Wells to have custody of their children. She claims that the evidence of Wells's conduct was probative, and that "just because the evidence would damage the prosecutor's case was no reason to exclude it."

We review the court's rulings under Evidence Code section 352 for an abuse of discretion (*People v. Valdez* (2004) 32 Cal.4th 73, 108) and find none. To explore evidence of misdemeanor public disturbances from a prior decade, a screaming argument in which a neighbor intervened, and other conduct and statements by Wells would have consumed a great deal of time and rather than being particularly probative would largely just have maligned the victim of the crime. Whether Ramos's and Haverly's opposition to her mother having custody of the children was reasonable is not relevant to whether they conspired to kill



her, and to the extent that the evidence was in any way probative, the trial court could reasonably have concluded that its probative value was outweighed by its prejudicial nature.

The one evidentiary ruling that Ramos singles out and discusses in detail with a specific argument of error and prejudice is the trial court's ruling that she could not introduce evidence of the conduct underlying Wells's 1999 misdemeanor conviction for a public disturbance. The court concluded that the evidence was more prejudicial than probative under Evidence Code section 352, noting that the conviction was remote, inquiry into the conduct would be time-consuming, and it had very little probative value. Ramos argues that Wells's conviction was not remote, citing cases in which courts found even older offenses not to be remote. She also contends that the evidence of Wells's conduct was probative because it "discounted the prosecutor's motive evidence by showing why [Ramos] did not want her mother to have custody of her children which, in turn, would cast reasonable doubt on her guilt of conspiring to kill her mother." The trial court could reasonably have concluded that testimony about conduct underlying a conviction from 14 years ago was remote, that it would have consumed an undue amount of time, that it was largely if not completely irrelevant to the issues presented by the case, and that its prejudicial impact outweighed its probative value. The trial court did not abuse its discretion.

#### D. Exclusion of Evidence about Sheaff (Ramos and Haverly)

The trial court permitted Ramos to question Sheaff about whether he had a financial interest in what happened to Ramos as a result of this case such that he might be biased or have an incentive to alter his testimony for his own financial gain. Under



Evidence Code section 352, however, the court would not permit inquiry into a dispute that Sheaff and Wells had over the distribution of their father's estate, on the ground that its probative value was minimal at best, and it was confusing and time-consuming. Ramos, joined by Haverly, argues that the trial court prejudicially erred.

Ramos argues that the details of the family estate dispute should have been admitted because they were relevant to Sheaff's bias. Specifically, she contends that as a result of the family dispute Sheaff had "a real financial incentive" to portray her in "a very negative manner." Ramos rests her argument on a single legal principle: "Evidence as to potential bias of a witness is admissible," including evidence that a witness has an unusual interest in the outcome of the case.

As Ramos acknowledges, however, the trial court permitted her to question Sheaff about whether he had a financial interest in the case, and she does not argue that the opportunity to inquire was inadequate to permit her to question Sheaff about bias, financial interest in the outcome, or any financial incentive to lie or mislead. Instead, Ramos complains that the trial court "protected the image of Mrs. Wells as a benign grandmother rather than the manipulative individual she oft times was." Ramos describes Sheaff's testimony as "very negative" about her and identifies unfavorable statements he made about her while testifying. She complains that the court sustained objections to questions that cast doubt on Wells's character, such as inquiries to Sheaff about an incident in which Wells wrongly accused a caretaker of stealing from her. None of these assertions tends to demonstrate any error in the trial court's ruling that Sheaff could be examined about a financial interest in the outcome of the case



but not the details of the family dispute over the division of an estate. Ramos has not established any abuse of discretion here.

E. Admission of Evidence of Uncharged Acts (Ramos)

Ramos objected on relevance grounds to the admission of evidence that she reported the van stolen after she and Haverly sold it. On appeal, she contends that the trial court abused its discretion in admitting this evidence and that the error deprived her of a fair trial and due process. She acknowledges that she did not raise federal constitutional grounds when objecting to the introduction of the evidence, but claims that the contention is cognizable nonetheless because the claim required no trial court action to preserve it, and it merely asserts that the court's ruling also violated the Constitution. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 990, fn. 5.)

Ramos argues that the challenged evidence was intended “simply to portray [her] as a woman of bad character who had a propensity to admit crimes.” We conclude that the court did not err in admitting this evidence. Evidence of a defendant's other bad acts is admissible when it is offered to support or attack his or her credibility or to prove a fact other than his disposition to commit such an act. (Evid. Code, § 1101.) Here, Ramos's affirmative conduct in making the false report both tended to establish her participation in the overall scheme and was relevant to her credibility. Moreover, any error in admitting this evidence would be harmless under any standard. Not only was the jury informed of Ramos's multiple prior convictions, but the failed attempt to report the van stolen was no more prejudicial than the many other frauds Ramos admitted to committing, and it paled in comparison with her knowledge of the plot to harm Wells.



#### **IV. Alleged Instructional Error**

##### **A. CALJIC No. 6.11 (Haverly and Ramos)**

Haverly, joined by Ramos, argues that the trial court erred when it instructed the jury with CALJIC No. 6.11, concerning conspiracy, and that the natural and probable consequences language in this jury instruction “allowed the jury to convict [them] of conspiracy to commit murder without finding that he had the intent to kill if they believed that the scope of the conspiracy was robbery and that Phillips’ attempt on Ms. Well[s’s] life was a natural and probable consequence of that agreement to commit robbery.” Any such possibility was directly precluded by CALJIC No. 6.22, which, as given, advised the jury that it could not return a guilty verdict as to any defendant on the conspiracy count unless it unanimously agreed beyond a reasonable doubt that the defendant had knowingly joined in a conspiracy to commit first degree murder. The jury, moreover, was fully instructed with CALJIC No. 8.69 on the offense of conspiracy to commit first degree murder, including the requirement that each conspirator “harbored express malice aforethought, namely a specific intent to kill unlawfully another human being.” We presume that the jury followed the instructions given. (*People v. Gonzalez* (2018) 5 Cal.5th 186, 202.)

##### **B. Failure to Instruct on Theft (Phillips)**

Phillips argues on appeal that the trial court had a duty to instruct the jury sua sponte on theft as a lesser included offense of robbery. “A trial court must instruct on all lesser included offenses supported by substantial evidence. [Citations.] The duty applies whenever there is evidence in the record from which a reasonable jury could conclude the defendant is guilty of the



lesser, but not the greater, offense. [Citations.]” (*People v. Duff* (2014) 58 Cal.4th 527, 561.) The court has no duty to instruct on a lesser included offense when there is no evidence the offense was less than that charged. (*People v. Eid* (2014) 59 Cal.4th 650, 656.) We independently review the question of whether the trial court erred by failing to instruct on a lesser included offense. (*People v. Booker* (2011) 51 Cal.4th 141, 181.)

The evidence adduced at trial would not permit a reasonable jury to conclude that Phillips had committed the lesser offense of theft but not the greater offense of robbery. Phillips’s intent to rob Wells was undisputed throughout the trial. Not only did Haverly testify that the plan was for Phillips to rob Wells, but Phillips testified repeatedly that one of his intentions upon going to Wells’s home was to take her purse, which Haverly had said would have envelopes of money in it. Phillips testified that it was “the absolute truth” that he planned to hurt but not kill Wells and to rob her. He testified that he selected a lighter weapon to use against Wells because the heavy one Haverly had given him would have hurt Wells more severely than necessary to fulfill his instructions to “get the money from the purse and hit her a couple of times in the head and put her in the hospital.” The van was running low on fuel as Phillips drove to Long Beach before the attack, and his plan was to use the money he would find in Wells’s purse to pay for gasoline to drive back to Monterey after the attack. Phillips testified that his intent when he began to attack Wells was to render her unconscious, retrieve her purse, and flee. He also testified that when he grabbed Wells’s purse, even though he did not immediately see an envelope full of money, he still believed there was money inside. In closing argument, Phillips’s attorney



argued to the jury that Haverly, Ramos, and Phillips all told the police that Phillips was supposed to rob Wells because that was the truth: “This is what the plan was.” There was no substantial evidence to support a theory that Phillips did not intend to rob Wells, but merely formed an intent to take the purse after he had violently attacked her.

Phillips, however, argues that a theft instruction was necessary because the prosecution’s theory of the case was that Phillips’s purpose in traveling to Long Beach was to murder Wells, not to rob her. We have reviewed the prosecutor’s closing argument to Phillips’s jury, and we observe that the prosecution’s theory was that Phillips’s purpose in traveling to Long Beach was not only to rob Wells but also to murder her. The prosecution went through the elements of robbery and the evidence supporting those elements in closing argument. The prosecution argued that in addition to robbing Wells, Phillips must also have intended to murder Wells because he took steps that would not be taken by a person intending only to rob her. Contrary to Phillips’s claim, the prosecution’s theory was not that Phillips went to Wells’s home solely to murder her.

## **V. Failure to Dismiss a Juror (Ramos)**

During trial, the court questioned Ramos Juror No. 12 after an alternate juror reported that she was making distracting critical comments when witnesses testified. Juror No. 12 agreed to discontinue her comments when the court asked her to do so. She testified that she did not favor either side, that she could be fair and impartial, that she could keep an open mind, and that she would wait to judge the case until all evidence had been presented. She agreed not to deliberate until she was in the jury room. Ramos moved to excuse the juror, but the court refused



because there was not sufficient evidence to demonstrate that the juror was unable to perform her duty. On appeal, Ramos argues that Juror No. 12 should have been dismissed because her negative remarks during the trial demonstrated that she was biased and had prejudged the case.

Section 1089 provides that a juror may be discharged if the trial court finds he or she is unable to perform his or her duty. This inability “‘must appear in the record as a demonstrable reality.’ [Citation.]” (*People v. Armstrong* (2016) 1 Cal.5th 432, 450.) The trial court did not err when it concluded that the evidence did not require the removal of Juror No. 12. Well into a long, multi-defendant case with three separate juries, Juror No. 12 expressed exasperation, but there was no evidence that she was commenting on defense evidence in a negative way or that her critical comments indicated actual bias against any party as opposed to general frustration with the trial’s pace and progress. She denied prejudging the case or favoring any party, and the court credited her testimony. There was no evidence that her comments indicated that she had reached any conclusions about the proper outcome of the case, and she agreed not to deliberate until the jury was sent to do so. Ramos has not established that the record showed a demonstrable reality that Juror No. 12 was unable to perform her duty, and she has therefore not established any error in declining to dismiss her.

## **VI. Sufficiency of the Evidence (Haverly and Ramos)**

Haverly and Ramos both challenge the sufficiency of the evidence to support their convictions. ““When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable



to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.] We determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citation.] In so doing, a reviewing court “presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” [Citation.]” (*People v. Rangel* (2016) 62 Cal.4th 1192, 1212-1213.)

Ramos argues that the evidence was insufficient to support her convictions of conspiracy to commit murder, attempted murder, and robbery. After setting forth portions of Phillips’s testimony that tended to minimize her involvement and presented her as intoxicated, she concludes that the “evidence showed that throughout this entire period [Ramos] was so perpetually inebriated that she could not possibly have formed the requisite intent to commit” the crimes. Rather than demonstrating that even when viewed in the light most favorable to the prosecution, the evidence is not sufficient to support the verdicts, Ramos articulates a view of the evidence, more favorable to the defense, that would permit a jury to conclude that she lacked the specific intent to commit the crimes. This is essentially an invitation to reweigh the evidence, which this court cannot do. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27 (*Lindberg*).)

If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be



reconciled with a contrary finding. (*Lindberg, supra*, 45 Cal.4th at p. 27.) Evidence was presented that the conspiracy to commit Wells began weeks before the attack, that Ramos was present during discussions about it, and that Ramos knew of the plan and agreed to it. There was evidence Ramos discussed the plan with Phillips, took actions to secure funding and to obtain information necessary to stage the attack, and did not warn Wells. Given this evidence that Ramos conspired to kill Wells and aided and abetted the robbery and attempted murder, her intoxication in the final period before the attack does not establish that the evidence was insufficient to support her convictions.

Ramos next sets forth a description of some of Haverly's testimony, which she describes as consistent with Phillips's testimony concerning her "lack of knowledge and intent." Ramos makes no legal or factual argument concerning this summary of the testimony. "[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]' [Citations.] This principle is especially true when an appellant makes a general assertion, unsupported by specific argument, regarding insufficiency of evidence. [Citation.]" (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Both Ramos and Haverly argue that their convictions for conspiracy to commit murder should be reversed because the evidence did not establish that any of the overt acts alleged in the operative information<sup>10</sup> were carried out as part of a conspiracy to commit murder. "Conspiracy to commit murder requires an

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<sup>10</sup> The operative information asserted fifteen overt acts, but the final act was not submitted to the jury for determination.



agreement to commit murder and an overt act by one or more of the conspirators.’ [Citation.] Conspiracy also requires specific intent, which includes two elements: (1) the intent to agree or conspire and (2) the intent to commit the offense that is the object of the conspiracy. [Citation.] Evidence of an agreement does not require proof that the parties met and expressly agreed; a criminal conspiracy can be shown through circumstantial evidence. [Citation.] ‘Evidence is sufficient to prove a conspiracy to commit a crime “if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy.”’ [Citation.]” (*People v. Penunuri* (2018) 5 Cal.5th 126, 144-145 (*Penunuri*).) “[A]ny one of the conspirators, and not necessarily the charged defendant, may commit the overt act to consummate the conspiracy.” (*People v. Russo* (2001) 25 Cal.4th 1125, 1135.)

Here, the evidence supported the juries’ determinations that Haverly and Ramos conspired to commit murder and that an overt act was committed in furtherance of the agreement. Haverly and Phillips were in jail together beginning in late August 2013. Ramos fraudulently obtained \$10,000, the same amount that Phillips, who had no obvious source of income, promised his family he would receive shortly. Ramos and Haverly discussed “what needs to . . . happen” in the context of Wells’s attempts to get custody of her grandchildren. Using vague and coded language, the couple discussed “what we have to do as a collective,” “what needs to be done,” and when the act needed to be done, all in close proximity to comments about Wells trying to “take” their children. Haverly told Ramos to think of a



way for them to travel south, “do what we need to do,” and then immediately return to Monterey. He advised her to mentally prepare herself to say goodbye to unnamed people who were once in their lives, and he promised her that he had a lot of stuff figured out and “big things going on.” This evidence, along with Haverly’s expressed desire that Wells disappear and his post-arrest statements to the undercover agents, permitted the conclusion that the object of the conspiracy was to commit murder. Thereafter, Ramos peppered her mother and uncle with inquiries that would permit her to determine when Wells would be home alone. Ramos and Haverly gave Phillips clothing and lent him their van. Phillips savagely beat and attacked Wells, leaving her for dead.

On this evidence, the jury could reasonably conclude that the parties conspired to commit murder and that at least one overt act was performed in furtherance of the conspiracy. The valid finding of a single overt act is sufficient to support the conspiracy verdict. (*People v. Jurado* (2006) 38 Cal.4th 72, 122.) “Although a conviction of conspiracy does require commission of an overt act in furtherance of the agreement, the act does not need to be committed by every conspirator. ‘Once one of the conspirators has performed an overt act in furtherance of the agreement, “the association becomes an active force, it is the agreement, not the overt act, which is punishable.”’ [Citation.]” (*Penunuri, supra*, 5 Cal.5th at p. 146.)<sup>11</sup>

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<sup>11</sup> Ramos’s final argument in the portion of her brief dedicated to the sufficiency of the evidence, entitled “Additional Reasons Why the Convictions on Counts 1, 2, and 3 Should Be Reversed,” consists of a contention that the convictions are invalid because the prosecutor used a “creative collage of snippets of multiple



## **VII. Cumulative Error (Ramos)**

We reject Ramos’s contention that the cumulative effect of the claimed errors identified in her appeal deprived her of due process of law and a fair trial. Because we have found only one of Ramos’s claimed errors to constitute an individual error—and that error was a statement made outside the presence of the jury that had no impact on the trial—she cannot establish any cumulative error.

## **VIII. Restitution Award (All Defendants)**

Each defendant stipulated to direct victim restitution in the amount of \$14,207.84, and the court ordered each defendant to pay that amount. On appeal, Ramos, joined by Phillips and Haverly, argues that the abstracts of judgment should be modified to expressly state that the restitution order is joint and several.

The trial court had the authority to designate the direct victim restitution award as joint and several, but it was not required to do so. (See *People v. Neely* (2009) 176 Cal.App.4th 787, 800.) The trial court was not asked to decide, and apparently did not decide, whether to declare the liability joint and several. While the defendants argue that amendment of the abstracts of judgment is necessary to avoid unjust enrichment of the Government Claims Board, no such modification is necessary.

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telephone conversations” between Ramos and Haverly that were edited, and the trial court “rejected requests” to add context to the isolated parts of the recorded conversations. This claim is forfeited because it is not supported by legal argument. (*Stanley, supra*, 10 Cal.4th at p. 793.)



Not only did each defendant stipulate that this was the proper amount of restitution without asking the court to designate the award joint and several, but also, as a matter of law, each defendant is entitled to a credit for any actual payments made by one of the other defendants. (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1535.) There is, therefore, no possibility of unjust enrichment. Accordingly, the defendants have not demonstrated any error requiring modification of the abstracts of judgment or restitution orders.

### **DISPOSITION**

The judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.